

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 26TH DECEMBER 2006 / 5TH POUSHA 1928

Bail Appl..No. 7665 of 2006()

AGAINST THE JUDGEMENT/ORDER IN BA.7442/2006

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PETITIONER/ACCUSED 1 & 2

1. JAYESH, S/O.RAMACHANDRAN,
JAYESH BHAVAN, THENGAMMUM MURI, PALICKAL VILLAGE,
ADOOR.
2. SANTHOSHKUMAR, S/O.SIVARAMAN NAIR,
MANGATTETHU VEEDU, ELIPPAKULAM,
PALLIKUNNAM VILLAGE.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI.G.KRISHNAKUMAR

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. EXCISE INSPECTOR, CHIRAYINKEEZHU.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 26/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

Bail Application No. 7665 of 2006

Dated: December 26, 2006

O R D E R

Petitioners who are accused Nos. 1 and 2 in O.R. No. 53/06 of Chirayinkeezhu Excise Range for offences punishable under Sections 55 (a) and 67 (B) of the Abkari Act for allegedly carrying 310 litres of spirit in a Maruti Car on 27-10-2006 and who were arrested on the same day, seek their enlargement on bail. Their earlier application filed as B.A. 7442/06 was dismissed by this Court on 15-12-2006. It is thereafter that the petitioners have filed the present bail application.

2. Adv. Sri. Sivakumar, the learned Public Prosecutor opposed the application and made available to me the investigation files.

3. I heard both sides and perused the investigation files.

4. It is too early to accept the petitioners' contention that merely because they were found inside the Maruti Car in which the 310 litres of spirit was being carried, it cannot be said that they were in effective control over the contraband spirit. Both the petitioners have made independent confessional statements to the Excise Inspector admitting their clandestine transport of the contraband spirit. The said confession made by each of them is not hit by Sec.

25 of the Evidence Act. On a perusal of the investigation files, I am not satisfied that both the grounds enumerated under sec.41A (b)(ii) of the Abkari Act are present in this case so as to justify the release of the petitioners on bail.

This bail application is accordingly dismissed.

V.RAMKUMAR,
JUDGE.

Kerala.